

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

**MIDWEST INDEPENDENT TRANSMISSION  
SYSTEM OPERATOR, INC.**

---

Docket No. **ER02-2458**

**MOTION TO INTERVENE OUT-OF-TIME BY THE STATE OF MICHIGAN  
AND THE MICHIGAN PUBLIC SERVICE COMMISSION**

The State of Michigan and the Michigan Public Service Commission (collectively “Michigan”) respectfully moves for leave to intervene out-of-time in the above-captioned docket, pursuant to Rule 214, 18 CFR 385.214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”). In support thereof, Michigan states as follows:

1. Service of all pleadings, documents, and communications in this matter shall be made at both of the following addresses:

Michael A. Cox  
Attorney General

David A. Voges (P25143)  
Steven D. Hughey (P32203)  
Patricia S. Barone (P29560)  
Assistant Attorneys General  
Public Service Division  
6545 Mercantile Way, Suite 15  
Lansing, MI 48911-5984

David D’Alessandro  
Special Assistant Attorney General  
Stinson Morrison Hecker LLP  
1150 18<sup>th</sup> Street, N.W., Suite 800  
Washington, D.C. 20036-3816

2. The Michigan Public Service Commission (“MPSC”) is an agency of the State of Michigan, created by 1939 PA 3, MCL 460.1 *et seq*, as the Michigan regulatory agency having jurisdiction and authority to control and regulate rates, charges, and conditions of service for the

retail sale of electricity in the State of Michigan. The MPSC moves to intervene in this matter pursuant to the authority conferred by applicable state statutes, rules, and procedures.

3. The State of Michigan, with its capital located at Lansing, is a sovereign state of the United States of America, admitted to the Union as the 26<sup>th</sup> state on January 26, 1837. The State of Michigan is very energy intensive because of its climate, population, and position as one of the nation's leading industrial and agricultural states. The State of Michigan and its instrumentalities, subdivisions, and residents are significant consumers of electricity. The State of Michigan moves to intervene in this matter in its proprietary capacity as a substantial purchaser of electricity and in its *parens patriae* or quasi-sovereign capacity as guardian of the health, welfare, and property of its citizens.

4. On August 12, 2002, the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO" or "MISO") submitted proposed revisions to its OATT Schedules 7, 8, and 9 in order to create a separate pricing zone for Wolverine Power Supply Cooperative, Inc. ("Wolverine").

5. In its October 9, 2002 order, 101 FERC ¶ 61,004, the Commission rejected MISO's proposed tariff revisions and established settlement judge procedures. The Commission stated:

. . . We agree with the protesters that Wolverine's transmission facilities must meet the requirements of the seven factor test, as interpreted by the Michigan Commission, in order to ensure that Wolverine receives compensation for its transmission facilities on a basis comparable to the compensation received by Michigan Transco. Application of the seven factor test should form the starting point for these negotiations.

6. Per the seven-factor technical functional/test outlined by FERC in Order 888, the Michigan Commission has adopted transmission and distribution splits for numerous utilities serving Michigan customers, *e.g.* Consumers Energy Company in MPSC Case No. U-11337; Detroit Edison Company in MPSC Case No. U-11283; Alpena Power Company in MPSC Case No. U-11856; Northern States Power Company in MPSC Case No. U-12744; Cloverland Electric Cooperative in MPSC Case No. U-12896; Edison Sault Electric Company in MPSC Case No. U-12690; Wisconsin Public Service Corporation in MPSC Case No. U-12706; and Wisconsin Electric Power Company in MPSC Case No. U-12691. Several of these MPSC decisions have since been filed with and accepted by the Commission. The MPSC has not done any such review of Wolverine's transmission and distribution split.

7. Even though this docket is currently in the settlement discussion phase, Michigan, in response to the Commission's indication that the seven factor test should be applied "as interpreted by the Commission," seeks late intervention status. Michigan and the Commission share concerns over potential cost shifts in retail rates for Michigan's electricity customers, including those of Wolverine's member cooperatives and Consumers Energy Company. Michigan is also concerned over the facilities assignment issues raised by MISO's proposed tariff revisions and any resulting cost shifts.

8. If, as it appears from a review of the Commission's order, the Commission seeks the Michigan's interpretation of the Commission's seven-factor test regarding the split proposed by Wolverine and/or MISO, Michigan is willing to provide such an interpretation through an MPSC order after review of the proposed split. This would require the Commission to direct Wolverine to make a filing with the MPSC that would ask the MPSC to conduct a review of Wolverine's proposed transmission and distribution split, consistent with the approach the MPSC

has employed for other utilities, including Consumers Energy. In filing directly with the Commission, the instant case bypassed the established Michigan procedure to conduct a review of proposed transmission and distribution splits for utilities operating in Michigan prior to Commission making a determination on the MISO application herein.

9. Rule 214 allows for late interventions when good cause can be established. In its Order Granting Rehearing in *Consolidated Gas Supply Corp*, 20 F.E.R.C. ¶ 61,305 (May 13, 1982), the Commission identified four factors in evaluating whether good cause exists to permit late intervention: (1) the nature of interest alleged by the late intervenor and whether that interest is adequately represented by other parties in the proceeding; (2) whether permitting late intervention will prejudice other parties in the proceedings; (3) whether permitting the late intervention will delay resolution of the proceeding; and (4) the reasons offered by the late intervenor for not having filed on time.

10. Michigan is vitally interested in matters relating to the provision of electric service to businesses and individuals residing within its borders and the costs to be assessed for transmission and the allocation of those costs. Michigan thus has an interest in these proceedings that cannot be adequately represented by any other party.

11. No party will be prejudiced by the granting of this motion for the reason that the proceedings are still in a negotiation stage.

12. Intervention at this time will not disrupt the proceedings as Michigan will accept the record as it stands.

13. Michigan submits that good cause exists for it not having filed on time. Michigan recently became aware that the Chief Judge issued an order asking for an extension of time

because the settlement judge had reported that settlement progress had been steady. Even though a settlement has apparently been circulated, Wolverine has not requested the MPSC to assess the appropriate transmission and distribution split for Wolverine. Therefore, Michigan seeks to intervene at this time.

WHEREFORE, Michigan respectfully prays that the Commission:

A. Grant the State of Michigan and the Michigan Public Service Commission's Motion to Intervene Out-of-Time; and,

B. Grant such other and additional relief as necessary.

Respectfully submitted,

**STATE OF MICHIGAN and  
MICHIGAN PUBLIC SERVICE COMMISSION**

By its counsel:

Michael A. Cox  
Attorney General

David A. Voges (P25143)  
Steven D. Hughey (P32203)  
Patricia S. Barone (P29560)  
Assistant Attorneys General

Assistant Attorney General  
Public Service Division  
6545 Mercantile Way, Ste. 15  
Lansing, MI 48911-5984

David D'Alessandro  
Special Assistant Attorney General  
Stinson Morrison Hecker LLP  
1150 18<sup>th</sup> Street, N.W., Suite 800  
Washington, D.C. 20036-3816  
Telephone: (202) 785-9100

**DATED: March 3, 2003**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 3<sup>rd</sup> day of March, 2003, I served copy of the foregoing document by first class United States mail, postage prepaid, to all parties listed on the official service list compiled by the Secretary in this proceeding.

/s/ Patricia Barone

Patricia Barone